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March 20, 2003

Mr. Joe Werner
Chief, Telecommunications Division
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243

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TN REGULATORY AUTHORITY
TELECOMMUNICATIONS DIVISION

Re: Complete Choice Plus Voice Mail
Data Request of March 14, 2003

Dear Mr. Werner:

This is in response to the questions set forth in your letter Friday, March 14, 2003. Thank you again for extending the deadline to respond from March 17th until today.

Your letter, which referenced a 1999 Authority *Order Denying Tariff* in Docket No. 99-00936, included the following three questions:

1. Is the waiver of recurring charges for voice mail a "temporary waiver"? Explain your answer.
2. Under the filing, how long will the monthly recurring charges for voice mail be waived?
3. Is the promotion available for resale at wholesale rates?

Response to Questions 1 and 2

The waiver of recurring charges for voice mail is a temporary waiver in that only eligible customers who subscribe to Complete Choice® during the limited term of the offer (March 11–June 10, 2003) will have their BellSouth voice mail recurring charge waived. While those recurring charges will be waived for those customers as long as they subscribe to Complete Choice®, customers will not be required to sign a contract or make any term commitment whatsoever in order to be eligible for this promotion. This means that the customer may cancel at any time without payment of any termination

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liability charges. From the customer's perspective, therefore, the waiver is as temporary as the customer wants it to be.

The *Order Denying Tariff* referenced in your letter addressed a very different promotion and a very different set of circumstances. On December 2, 1999, BellSouth submitted a promotion to the Authority that offered discounts to business customers that required customers to sign multi-year agreements with termination liability provisions. At that time, there was a disagreement between BellSouth and some Directors of the TRA with respect to what appropriate termination liability would be for customers terminating multi-year contracts early without cause. In its *Order Denying Tariff*, the TRA stated that "any alleged promotion, such as the Submission here, that locks up a customer for multiple years in a manner that effectively prevents the customer from switching to a competitive carrier must not be permitted to go into effect without the Authority first having an opportunity to conduct a timely review." The Directors further stated that they reached their conclusion denying the tariff because "... the long-term contracts that derive from this Submission effectively operate to prevent customers from choosing a competitor of BellSouth during the entire term of an agreement, not just during the 90-day period of the 'special promotion.'" The premise for these statements was the Directors' concern that the termination liability provisions of long-term contracts were not reasonable.¹

The TRA also stated in its *Order Denying Tariff* that it was carefully scrutinizing the three (3) year contract promotion because "...the competitive telecommunications environment is in its infancy...."²

Clearly, BellSouth's promotion to waive recurring voice mail charges for new residential customers that purchase BellSouth Complete Choice® is very different from the situation facing the Authority in 1999. First, unlike the 1999 business promotion, the residential customers are not required to sign a contract or make any term commitment in order to be eligible for the promotion. Customers may cancel the promotion at any time without any termination liability. Second, subsequent to the entry of this *Order*, BellSouth submitted, and the TRA approved, new reduced termination liability provisions. Third, competition in Tennessee is not in its "infancy" as the TRA stated in 1999. This is demonstrated by the fact that the FCC ruled in BellSouth's 271 proceeding that BellSouth had irreversibly opened its market to competition in Tennessee. Circumstances, therefore, are dramatically different today than they were

¹ Recent argument, relating to the Welcoming Reward tariff, also focused on the "short term" nature of a promotion which involved a term commitment. Thus, both the *Order Denying Tariff* and the argument regarding Welcoming Reward focused on promotions that include term commitments. In contrast, this promotion includes no such term requirements and is consequently distinguishable.

² See pp. 6 and 7 of *Order* dated November 7, 2000, Docket No. 99-00936.

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on December 2, 1999 when BellSouth submitted the business promotion that was the subject of the *Order Denying Tariff*.

Response to Question 3

Complete Choice® is available at wholesale rates for resellers, but the voicemail service is not available for resale.

Voice mail services are "enhanced services", not "telecommunication services" subject to the resale obligation. BellSouth's obligation to offer telecommunications services at wholesale rates arises from the 1996 Federal Telecommunications Act and the Authority's order establishing wholesale discounts in the Avoidable Cost Docket. The TRA *Final Order* in that proceeding explicitly recognizes that, in accordance with § 251(c)(4) of the Federal Act, incumbents are required to "offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers..."³ Voice mail services are not "telecommunications services" under the Act. Rather, voice mail services are "enhanced services", not subject to the resale obligation. The Federal Act defines "telecommunications service" to mean "...the offering of telecommunications for a fee directly to the public...." The Federal Act in turn defines "telecommunications" to mean "the transmission between or among points as specified by the user, of information of the user's choosing, without change in the form or content of information as sent and received." See 47 U.S.C. §§ 153(46) and (43). BellSouth voice mail services do not involve the transmission of telephone calls and therefore do not constitute "telecommunications." Instead, BellSouth voice mail service merely allows the customer to store information (the greeting and the messages left by callers) and to retrieve that information later. As such, BellSouth voice mail service clearly is an "enhanced service", which the FCC defines as a service which "... involves subscriber interaction with stored information." See 47 C.F.R. § 64.702(a).⁴

Complete Choice® is a telecommunications service. Consistent with its obligation to make telecommunications services available for resale at the wholesale discount in accordance with FCC and TRA orders, BellSouth will continue to make its Complete Choice® plan available for resale at the wholesale discount.

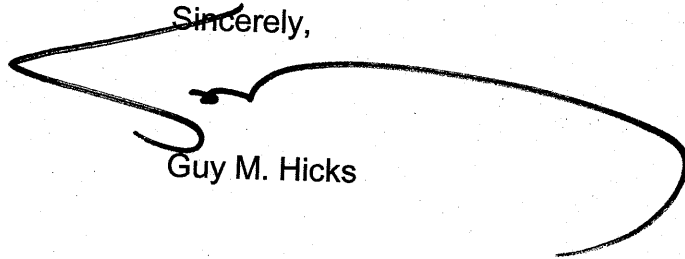
³ *Final Order* in Docket No. 96-01331, at p. 4.

⁴ In 1996, the FCC ruled that "information services" include all "enhanced services." See Implementation of the Non-accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, First Report and Order, 11 F.C.C. Rec. 21,905, 21,955-21,955 ¶¶102-103 (1996).

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If you have additional questions, please let me know.

Sincerely,

A handwritten signature in black ink, consisting of a large, sweeping loop that starts under the word 'Sincerely,' and ends under the name 'Guy M. Hicks'.

Guy M. Hicks

GMH/mts
Attachment